

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon Communications, Inc.,)	WT Docket No. 06-113
Transferor)	
)	
and)	
)	
América Móvil, S.A.B. de C.V.,)	
Transferee,)	
)	
Application for Authority to Transfer Control)	
of Telecomunicaciones de Puerto Rico, Inc.)	
(TELPRI))	

OPPOSITION TO MOTION TO REJECT

América Móvil, S.A.B. de C.V. (“América Móvil”) and its indirect wholly owned subsidiary, Telecomunicaciones de Puerto Rico (“TELPRI”), hereby submit their Opposition to the Telecommunications Regulatory Board of Puerto Rico’s (“Board”) Motion to Reject (“Motion”)¹ América Móvil’s December 31, 2007 Annual Progress Report to the FCC (“Annual Report”)².

The Commission should deny the Board’s Motion for the following reasons. First, in an effort to limit the types of investments that may be made to fulfill América Móvil’s investment

¹ Motion to Reject of the Telecommunications Regulatory Board of Puerto Rico (dated Feb. 7, 2008, but filed and served Feb. 11, 2008).

² América Móvil, S.A.B. de C.V., Annual Progress Report to the FCC for the Year Ended December 31, 2007, WT Docket No. 06-113 (filed Dec. 31, 2007); *see also* América Móvil, S.A.B. de C.V., Updated Annual Progress Report to the FCC for the Year Ended December 31, 2007, WT Docket No. 06-113 (filed Feb. 20, 2008).

commitment, the Motion confuses the investment commitment condition adopted by the FCC in the *Transfer Order*³ with the requirement that América Móvil provide an annual report of its progress in deploying infrastructure with respect to the commitment. Second, as a result of this error, the Motion suffers from two misapprehensions: (1) that América Móvil's March 23, 2007 commitment to invest "directly or through TELPRI \$1 billion over five years in communications and/or information services in Puerto Rico"⁴ is limited to traditional wireline facilities and services, and (2) that the commitment does not include investment in plant necessary to maintain existing service. Finally, the FCC should deny the Motion as an *ex post* request for relief that previously was rejected in the *Transfer Order*, and as fundamentally at odds with the Board's prior advocacy that América Móvil should be required to invest in expanding the wireline *and wireless* networks in Puerto Rico.

I. THE MOTION INCORRECTLY ATTEMPTS TO MODIFY THE AMÉRICA MÓVIL INVESTMENT COMMITMENT TO LIMIT THE TYPES OF INVESTMENTS THAT MAY BE MADE TO FULFILL THE COMMITMENT.

A. The Investment Commitment Condition Is Embodied In América Móvil's March 23, 2007 Commitment Letter.

The investment commitment condition clause in the Commission's *Transfer Order* granting the transfer of control of TELPRI from Verizon to América Móvil states that the "authorization and any licenses related thereto are subject to América Móvil's commitment in its March 23 Ex Parte Letter contained in Appendix D of this Memorandum Opinion and Order and

³ *Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195 (2007) ("*Transfer Order*").

⁴ Letter from Michael G. Jones, Counsel to América Móvil, S.A.B. de C.V. to Marlene S. Dortch, Secretary, Federal Communications Commission (dated Mar. 23, 2007) ("March 23, 2007 Commitment Letter" or "Commitment Letter").

Declaratory Ruling.”⁵ The Commitment Letter attached at Appendix D to the *Transfer Order* states that América Móvil “is committed to invest directly or through TELPRI \$1 billion over five years in communications and/or information services in Puerto Rico, and that these investments will promote improvements in these services.”⁶ Thus, the investment condition upon which the Commission relied when approving the transfer of control of TELPRI to América Móvil is exactly the commitment made by América Móvil in the March 23, 2007 Commitment Letter. As acknowledged by the Board, the Commitment Letter covers the full range of telecommunications services and facilities offered by TELPRI.⁷ There is nothing about this commitment that could or should be understood to limit the investments made to fulfill that commitment to wireline facilities and services, or to exclude investments in other communications and/or information services.

Similarly, the FCC should reject the Board’s characterization of América Móvil’s November 28, 2006 statement that the company “is committed to investing \$280 million to upgrade and maintain wireless infrastructure”⁸ as “above and beyond” the investment condition as described the March 23, 2007 Commitment Letter.⁹ This argument is unavailing because the

⁵ *Transfer Order* ¶ 77.

⁶ *Id.* at Appendix D.

⁷ *See* Motion at 5 (observing that the March 23, 2007 Commitment Letter is “sufficiently vague as to lump together wireless, wireline, broadband and virtually anything else ...”).

⁸ Letter in Response to FCC Information Request from Michael G. Jones, Counsel to América Móvil, S.A.B. de C.V., to Marlene S. Dortch, Secretary, Federal Communications Commission at 4 (dated Nov. 28, 2006).

⁹ Motion at 4.

Commission conditioned its grant of the TELPRI transfer of control on the March 23, 2007 Commitment Letter, not on the November 28, 2006 letter or any language therein.

B. The FCC's Requirement That América Móvil Submit An Annual Report Does Not Modify Or Limit The Investment Condition.

The required contents of the Annual Report should be read in light of the commitment embodied in the Commitment Letter, and not as a modification of the Commitment Letter. The FCC's requirement that América Móvil submit an Annual Report "describing the progress it has made in deploying infrastructure used to provide basic telephone and broadband services in Puerto Rico"¹⁰ does not modify or limit the categories of investment that may be made to fulfill the Commitment Letter upon which the Commission conditioned its approval of the transfer of control of TELPRI. Rather, the Annual Report is the vehicle by which América Móvil is required to update the Commission on its progress in meeting the investment commitment.

Contrary to the Board's statement in the Motion, América Móvil did not file the Annual Report to satisfy a condition placed on the company's acquisition of TELPRI.¹¹ The *Transfer Order* does not make submission of the Annual Report a condition of the FCC's approval.¹² In fact, the text of the *Transfer Order* states that the Commission intended to condition its approval of the transaction "on América Móvil investing \$1 billion over five years to improve service in Puerto Rico."¹³ The Commission fulfilled this intention in paragraph 77 of the *Transfer Order* with no reference to an annual report. In paragraph 36, the *Transfer Order* goes on to require

¹⁰ *Transfer Order* ¶ 36.

¹¹ *See* Motion at 1.

¹² *See Transfer Order* ¶¶ 36, 77.

¹³ *Id.* ¶ 36 and n.104 (citing the March 23, 2007 Commitment Letter at Appendix D).

that América Móvil submit an Annual Report “describing the progress it has made in deploying infrastructure used to provide basic telephone and broadband services in Puerto Rico.”¹⁴

Therefore, the Annual Report is the means through which América Móvil is required to update the Commission on its progress toward fulfilling the Commission’s condition as embodied in the Commitment Letter. It follows that the *Transfer Order*’s requirement of an Annual Report cannot be read to limit the scope of the investments that América Móvil may make to fulfill the Commitment Letter, and specifically does not exclude investments in wireless infrastructure or in plant necessary to maintain existing service. Thus, the Motion’s effort to limit the investments that “count” toward fulfilling the Commitment Letter by combining the Commitment Letter condition with the Annual Report requirement finds no support in the *Transfer Order*.

Accordingly, the FCC must reject the Board’s incorrect assertion that the Annual Report should not have included information regarding investments in plant necessary to maintain existing service and information regarding investment in wireless infrastructure.

C. The Annual Report Requirement Does Not Limit The Types Of Investments To Be Included In The Annual Report.

In any event, the Motion incorrectly construes the requirement that América Móvil file an annual report “describing the progress it has made in deploying infrastructure used to provide *basic telephone* and broadband services in Puerto Rico”¹⁵ as imposing a distinction between wireline and wireless service. This is incorrect for two reasons. First, the quoted language from the *Transfer Order* on its face draws a distinction between basic and broadband (*i.e.*, narrow band and broadband) service. Second, there is no basis for excluding wireless service from the

¹⁴ *Id.* ¶ 36.

¹⁵ *Id.* (emphasis added).

category of basic service. “Basic service” has long been understood to mean a fundamental transmission service, the effective equivalent of “telecommunications service” in the Communications Act, as amended in 1996.¹⁶ Both wireline and wireless service are “basic service” in the sense that both provide a fundamental transmission service.¹⁷ This interpretation follows the Commission’s discussion of the investment condition in the *Transfer Order*. For example, in Section III.D. of the *Transfer Order*, where the investment commitment is discussed, the Commission explicitly refers to América Móvil’s plans “to upgrade and maintain TELPRI wireless infrastructure” and to extend the company’s fiber optic network.¹⁸

Finally, it would be exceptionally unusual for the Commission to order specific types of investment, and *a fortiori* to order that the entire commitment be devoted to traditional wireline (POTS) at a time when there is a significant migration of voice-grade services to wireless and IP-based infrastructure.

¹⁶ The Commission has defined “basic service” as the offering of “a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information.” *Second Computer Inquiry*, Final Decision, 77 FCC 2d 384, ¶ 96 (1980). As the Commission has concluded, “Congress intended the categories of “telecommunications service” and “information service” to parallel the definitions of “basic service” and “enhanced service” developed in [the] Computer II proceeding” *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 US 967, 992-94 (2005); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 21 (1998).

¹⁷ Compare 47 U.S.C. § 332(d)(1) (defining “commercial mobile service” as “any mobile service ... that is provided for profit and makes interconnected service available ...”), and 47 U.S.C. § 332(c)(1) (providing for the common carrier treatment of commercial mobile services), and 47 C.F.R. § 20.3 (defining “commercial mobile radio service” as provided for profit, interconnected, and available to the public or a substantial portion of the public, or a functional equivalent of the foregoing), with 47 U.S.C. § 153(46) (defining “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used”).

¹⁸ *Transfer Order* ¶¶ 38-39 and n. 110.

II. THE FCC DENIED THE BOARD'S REQUEST THAT CERTAIN CONDITIONS BE IMPOSED ON THE TELPRI TRANSFER OF CONTROL.

In a Petition to Deny the applications to transfer control of TELPRI from Verizon to América Móvil, and in several pleadings submitted during the transfer proceeding, the Board held out the commitment GTE made when TELPRI was privatized in 1999 to “invest more than \$850 million in facilities and services during the next five years”¹⁹ as something that América Móvil should be required to emulate.²⁰ In the *Transfer Order*, the Commission expressly denied the relief requested in the Board’s Petition to Deny.²¹ While América Móvil’s Commitment Letter covers the full range of telecommunications facilities and services, the FCC did not grant the Board’s request when it adopted the investment condition. Thus, the Board’s assertion that the Commission adopted the investment condition “likely in response to Board concerns”²² is incorrect.

As a result, the Motion must be understood as an improper *ex post* attempt to increase and direct América Móvil’s investment commitment in Puerto Rico. The Board cannot point to

¹⁹ *Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferee, For Consent to Transfer Control of Licenses and Authorization Held by Puerto Rico Telephone Company and Celulares Telefónica, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 3122, ¶ 50, n. 138 (1999). See Consolidated Opposition of GTE Corp and GTE Holdings (Puerto Rico) LLC, at 5 (Oct. 20, 1998) (describing an \$850 million investment commitment to include TELPRI’s outside plant, wireline growth, computer and software enhancements, replacement and growth of facilities, station equipment and vehicles, wireless facilities and services, improvement of public phone service, and improvement and growth of TELPRI’s data network).

²⁰ Petition to Deny of the Telecommunications Regulatory Board of Puerto Rico at 5, 10 (filed July 14, 2006). Reply to Opposition of the Telecommunications Regulatory Board of Puerto Rico at 9-10 (filed July 31, 2006). See, e.g., Telecommunications Regulatory Board of Puerto Rico’s *ex parte* submissions of March 14, 2007.

²¹ *Transfer Order* ¶ 81.

²² Motion at 4.

anything that would permit the conclusion that the Commitment Letter exclusively addressed wireline facilities and services. Rather, the Board engages in conjecture that this is “likely” the case, while acknowledging that the Commitment Letter, on which the Commission conditioned grant of the transfer of control of TELPRI, “is sufficiently vague as to lump together wireless, wireline, broadband and virtually anything else”²³ The Board’s conjecture is inconsistent not only with the *Transfer Order*, but also with the *ex parte* presentations made by the members of the Board in November 2006, recommending that “the Commission condition approval on a program of significant investment in expansion and improvement, over the next five years, of both the wireline and wireless networks.”²⁴ Furthermore, the Board’s conjecture is at odds with its own March 14, 2007 *ex parte* submissions requesting “investment in plant improvement and expansion of both the wireline and wireless networks”²⁵ as a condition of the Commission’s approval of the transaction.

III. THE INFORMATION SUBMITTED IN THE ANNUAL REPORT IS QUANTIFIABLE AND VERIFIABLE.

The Board states that the information provided in the Annual Report is not “quantifiable and verifiable.” This is not the case. The Annual Report quantifies the investment made in three areas: basic wireline service, broadband and data services, and wireless services. Further, and contrary to the Board’s assertion, the investment data included in the Annual Report is verifiable

²³ Motion at 5.

²⁴ *Ex Parte* Letters of Veronica M. Ahern, Counsel to the Telecommunications Board of Puerto Rico, to Marlene S. Dortch, Secretary, Federal Communications Commission (dated Nov. 13, 2006) (describing the topics discussed in meetings with the Chairman, Commissioners, and Commission Staff attended by Ms. Ahern and members of the Board).

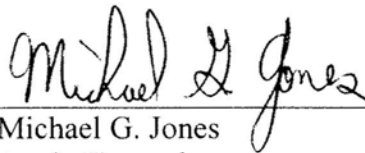
²⁵ *Ex Parte* Letters of Veronica M. Ahern, Counsel to the Telecommunications Board of Puerto Rico, to Marlene S. Dortch, Secretary, Federal Communications Commission (dated Mar. 14, 2007).

as it was compiled in compliance with 47 C.F.R. Section 32.2000, Instructions for Telecommunications Plant.²⁶

IV. CONCLUSION.

For the foregoing reasons, the Commission should deny the Board's Motion to Reject América Móvil's December 31, 2007 Annual Progress Report to the FCC regarding deployment of infrastructure used to provide basic telephone and broadband service in Puerto Rico.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael G. Jones", is written over a horizontal line.

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²⁶ See Annual Report at 1.

Certificate of Service

I Michael G. Jones, certify that I have on this date February 20, 2008 sent copies of the attached Opposition to Motion to Reject by first class mail and email to the following:

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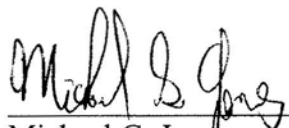
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